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Docket No. 204

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

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PROPOSED
MARKETING AGREEMENT
FOR MILK
EL PASO, TEXAS, SALES AREA
WITH

Exhibit A
Marketing Plan

Exhibit B
Rules for Establishment of Bases

This Marketing Agreement in its present form is proposed as the basis of a public hearing for the above-mentioned El Paso, Texas, Sales Area, and none of the provisions contained herein are to be regarded as having received the approval of the Agricultural Adjustment Administration as applying to this Market.

(THIS IS NOT FOR SIGNATURE)

I hereby certify that this is a true and correct copy of the Proposed Marketing Agreement for Milk, El Paso, Texas, Sales Area, on file in the Office of the Chief Hearing Clerk, United States Department of Agriculture, Agricultural Adjustment Administration.

(Signed) James K. Knudson
Acting Chief Hearing Clerk

Dated: June 19, 1934
Washington, D. C.

PROPOSED MARKETING AGREEMENT FOR MILK

EL PASO, TEXAS, SALES AREA

The parties to this Agreement are the contracting distributors, the contracting producers, and the Secretary of Agriculture of the United States.

Whereas, it is the declared policy of Congress as set forth in section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended; -

- (a) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period, the base period in the case of all agricultural commodities except tobacco being the prewar period, August 1909 - July 1914; and
- (b) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets; and
- (c) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer in the prewar period, August, 1909 - July, 1914; and

Whereas, pursuant to the Agricultural Adjustment Act, the parties hereto, for the purpose of correcting conditions now obtaining in the production of milk and the distribution thereof in the El Paso, Texas, Sales Area, and to effectuate the declared policy of the Act, desire to enter into a marketing agreement under the provisions of section 8 (2) of the Act:

Now, therefore, the parties hereto agree as follows:

I.

As used in this Agreement, the following words and phrases shall be defined as follows:

A. "Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk in conformity to the applicable health requirements of the El Paso Sales Area for milk to be sold for consumption as whole milk in the El Paso Sales Area.

"Contracting producer" means any producer or association of producers who may become a party signatory to this Agreement, according to the terms hereof.

B. "Distributor" means any of the following persons, irrespective of whether any such person is a producer or an association of producers, wherever located or operating, whether within or without the El Paso Sales Area, engaged in the business of distributing, marketing, or in any manner handling, in whole or in part, whole milk or cream for ultimate consumption in the El Paso Sales Area:

1. Persons -

- (a) who pasteurize, bottle or process milk or cream;
- (b) who distribute milk or cream at wholesale or retail (1) to hotels, restaurants, stores, or other establishments for consumption on the premises, (2) to stores or other establishments for resale, or (3) to consumers;
- (c) who operate stores or other establishments selling milk or cream at retail for consumption off the premises.

2. Persons who purchase, market, or handle milk or cream for resale in the El Paso Sales Area.

"Non-contracting distributors" means any person who performs any of the functions hereinabove described and has not become a party signatory to this Agreement, according to the terms hereof.

C. "El Paso Sales Area" means the territory within the limits of the county of El Paso, Texas, and the County of Dona Ana, New Mexico.

D. "Secretary" means the Secretary of Agriculture of the United States.

E. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

F. "Person" means individual, partnership, corporation, association, or any other business unit.

G. "Subsidiary" means any person of, or over whom or which, a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

H. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control of or over a distributor, whether by stock ownership or in any other manner.

I. "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data pertaining to the business of the person in question.

J. "Market Administrator" means the person designated pursuant to exhibit A, which is attached hereto and made a part hereof.

II.

1. The schedule governing the prices at which, and the terms and conditions under which, distributors shall purchase and/or accept delivery of milk from producers, shall be that set forth in exhibit A.

2. Except as provided in exhibit A, no distributor shall purchase milk from producers except (a) those producers having bases, which are to be reported as provided in exhibit B, which is attached hereto and made a part hereof, and (b) new producers pursuant to the provisions of exhibit A.

3. No distributor shall purchase milk from any producer unless such producer authorizes such distributor, with respect to payments for milk purchased from such producer, to comply with the provisions of exhibit A.

4. (a) The distributors shall severally, from time to time, upon request of the Secretary, furnish him with such information as he may request, on and in accordance with forms of reports to be supplied by him, for the purposes of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this Agreement and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purpose of this Agreement are being effectuated; such reports to be verified under oath. The Secretary's determination as to the necessity of and the justification for the making of any such reports, and the information called for thereby, shall be final and conclusive.

(b) For the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all the books and records of each distributor and the books and records of the affiliates and subsidiaries of each distributor, shall, during the usual hours of business, be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive.

(c) The distributors and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all the financial transactions of their respective businesses and the financial condition thereof.

(d) All information furnished the Secretary, pursuant to this paragraph, shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

5. No distributor shall purchase milk or cream from, or process or distribute milk or cream for, or sell milk or cream to, any other distributor who he has notice is violating any provision of this Agreement, without first reporting such violation to the Market Administrator.

6. The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, to act as his representative in connection with any of the powers provided in this Agreement to be exercised by the Secretary.

7. Each distributor who is obligated to report pursuant to paragraph 4 of section A of exhibit A shall within thirty days after the effective date of this Agreement, furnish to the Market Administrator a bond with good and sufficient surety thereon, satisfactory to the Market Administrator (in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the Market Administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in exhibit A. Any distributor who commences to do business after the effective date of this Agreement, shall as a condition precedent to engaging in such business, furnish to the Market Administrator a bond in conformity with the foregoing provision.

The Market Administrator may, (a) if satisfied from the investigation of the financial condition of a distributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (b), if, pursuant to a State statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirement of the bond as to such distributor. Such distributor may, upon a change in such circumstances, be required by the Market Administrator to comply with the foregoing requirement.

Each distributor who is unable to meet the requirements of the foregoing provisions, shall make periodic deposits with the Market Administrator at such times, in such amounts, and in such manner as the Market Administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligation as provided in exhibit A.

8. If any provision in this Agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of such provision and of the remainder of this Agreement and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

9. Nothing herein contained shall be construed in derogation of the right of the Secretary to exercise any powers granted him by the Act, and in accordance with such powers, to act in the premises whenever he shall deem it advisable.

10. The contracting distributors hereby apply for and consent to licensing by the Secretary, subject to the applicable General Regulations of the Agricultural Adjustment Administration.

11. This Agreement confers no exemption from the antitrust laws of the United States and does not make lawful any acts otherwise unlawful, excepting as provided in the Act to the extent necessary to accomplish the purposes of this Agreement.

12. This Agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument, as if all such signatures were contained in one original.

13. After this Agreement first takes effect, any producer, any association of producers, or any non-contracting distributor may become a party to this Agreement, if a counterpart thereof is executed by him and by the Secretary. This Agreement shall take effect as to such new contracting party at such time as the Secretary may declare above his signature attached to such counterpart, and the benefits, privileges, and immunities conferred by this Agreement shall then be effective as to such new contracting party.

14. This Agreement shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the following ways:

(a) The Secretary may, at any time, terminate this Agreement as to all parties hereto, by giving at least one day's notice by means of a press release or any other manner which the Secretary may determine.

(b) The Secretary may, at any time, terminate this Agreement as to any party signatory hereto, by giving at least one day's notice by depositing the same in the mail, addressed to such party at his last known address.

(c) The Secretary shall terminate this Agreement upon the request of sixty-seven (67) percent of the contracting producers, measured by total volume of milk produced and marketed by contracting producers for distribution as fluid milk, during the calendar month next preceding the date of any such request, or sixty-seven (67) percent of the distributors, measured by total volume of milk distributed by the distributors as fluid milk during such calendar month, by giving notice in the same manner as provided in section (a) of this paragraph.

(d) This Agreement shall, in any event, terminate whenever the provisions of the Act, authorizing it cease to be in effect.

15. Any term of this Agreement, with the exception of paragraph 14 hereof, may be amended upon the consent of (a) sixty-seven (67) percent of the contracting producers, measured by total volume of milk produced and marketed by the contracting producers for distribution as fluid milk during the calendar month next preceding the date of any such amendment, and (b) sixty-seven (67) percent of the distributors, measured by total volume of milk distributed by contracting distributors as fluid milk during such calendar month: Provided, however, That any such amendment

shall become effective only upon the written approval of the Secretary.

In witness whereof, the contracting producers and contracting distributors, acting under the provisions of the Agricultural Adjustment Act, for the purposes and subject to the limitations therein contained, and not otherwise, have herunto set their respective hands and seals.

(SEAL)

Whereas, it is provided by section 8 of the Act as follows:

"In order to effectuate the declared policy, the Secretary of Agriculture shall have power - - - (2) after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act."

And -

Whereas, due notice and opportunity for hearing to interested parties has been given pursuant to the provisions of the Act, and the regulations issued thereunder; and

Whereas, the Secretary finds (1) that the contracting producers are engaged in the marketing of milk, and that the contracting distributors are engaged in the distribution of fluid milk in the current of interstate commerce; and (2) that the marketing of milk and the distribution of fluid milk in intrastate commerce is inextricably intermingled with the marketing of milk and the distribution of milk in interstate commerce; and

Whereas, it appears, after due consideration, that this Agreement will tend to effectuate the policy of Congress declared in section 2 of the Act, as hereinbefore in this Agreement set forth.

Now, therefore, I, _____,
Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, for the purpose and within the limitations therein contained, and not otherwise, do hereby execute this Agreement under my hand and official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this _____ day of _____, _____, and pursuant to the provisions hereof, declare this Agreement to be effective on and after _____ m. eastern standard time, _____, _____.

(SEAL)

Secretary of Agriculture.

EXHIBIT A

Marketing Plan

SECTION A. Cost of Milk to Distributors.

1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of three and five-tenths percent (3.5%) butterfat content, which he has purchased from producers (including new producers as defined in section G of this exhibit), delivered f.o.b. distributor's plant in the El Paso Sales Area: (Prices for the various classes of milk will be determined only after full consideration has been given to the information presented at the public hearing on this Marketing Agreement.)

Class I - per hundredweight.

Class II- For each hundred pounds of milk, three and five-tenths (3.5) times the average price per pound of ninety-two (92) score butter at wholesale in the San Francisco Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus percent (%) thereof, plus ()cents.

Class III-For each hundred pounds of milk, three and five-tenths (3.5) times the average price per pound of ninety-two (92) score butter at wholesale in the San Francisco Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus () cents.

The term "delivery period" shall mean the period from the 1st to, and including, the 15th day of each month, or the period from the 16th day to, and including, the last day of each month.

2. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the El Paso Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption in the El Paso Sales Area.

Class III milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I and Class II milk.

Milk delivered to a distributor by producers during any delivery period and sold or distributed as milk or cream out-

side the El Paso Sales Area or sold by such distributor to another distributor (including any person who sells, uses or distributes such milk or cream for ultimate consumption in any market with respect to which no License or Agreement is in effect pursuant to section 8 (2) (3) of the Act covering such purchase from producers and such sale as milk or cream) shall be accounted for by the first distributor as Class I or Class II milk, respectively, unless such first distributor, on or before the date fixed for filing reports with the Market Administrator for such delivery period shall furnish to the Market Administrator proof satisfactory to the Market Administrator that such milk or cream has been utilized for a purpose other than sale, use or distribution for ultimate consumption as milk or cream, in which event such milk or cream shall be classified in accordance with such other use.

Any distributor who does not sell or distribute whole milk for ultimate consumption in the El Paso Sales Area may purchase milk from producers who do not have established bases. Such distributor

- (a) shall not sell cream to other distributors for distribution and ultimate consumption in the El Paso Sales Area at a price less than the price at which such distributor sells similar cream for distribution and ultimate consumption nearest the location where milk is processed into such cream by such distributor, plus the reasonable cost of transporting such cream to the El Paso Sales Area;
- (b) shall not be subject to any of the terms or provisions of this exhibit except as set forth in subdivision (a) above, with respect to milk purchased from producers who do not have established bases, but
- (c) may at any time, with respect to such milk, be required by the Market Administrator to submit reports, containing such information as the Market Administrator may require, similar to the kind of information reported by other distributors pursuant to paragraph 4 hereof, which information shall be kept confidential in the manner provided in such paragraph.

3. The established base for each producer shall be the quantity of milk allotted to such producer in accordance with the provisions of exhibit B.

The delivered base for each producer shall be that quantity of milk delivered by such producer to distributors which is not in excess of the established base of such producer.

The delivered base for each distributor required to report pursuant to paragraph 4 (b) shall be the quantity of milk

produced by such distributor and sold, used or distributed by him as Class I, Class II and Class III milk which is not in excess of the established base of such distributor. For the purpose of such computations and adjustments the amount of exemption to which any distributor is entitled pursuant to the terms of paragraph 4 (b) shall be ratably deducted from (a) such distributor's total sales and uses not in excess of his established base, and (b) such distributor's total sales or uses in excess of his established base.

4. (a) On or before the 5th day of each delivery period each distributor, to whom milk or cream was delivered during the preceding delivery period by (1) producers (who are not also distributors) and/or (2) distributors (other than those who operate only stores or other similar establishments), shall report to the Market Administrator with respect to milk delivered during such delivery period in a manner prescribed by the Market Administrator:

- (1) The actual deliveries (at each location) of the producers (and new producers) supplying such distributor, the total quantity of milk represented by the delivered bases of all such producers, and the total quantity of milk represented by the excesses over delivered bases of all such producers;
- (2) The actual deliveries, if any, made to him by other distributors;
- (3) The quantities of milk delivered which were sold, used or distributed by him as Class I, Class II and Class III milk, respectively; and
- (4) Such other information as the Market Administrator may request for the purpose of performing the provisions of this exhibit.

(b) On or before the 5th day of each delivery period each distributor who produces milk distributed by him as whole milk or cream shall submit reports to the Market Administrator containing the same information with respect to the preceding delivery period required in subdivision (a) of this paragraph, and in addition thereto the total amount of milk produced by such distributor and sold during such delivery period as Class I, Class II and Class III milk.

Each such distributor shall be obligated to account to the Market Administrator for all of his sales of Class I, Class II and Class III milk, at the prices indicated in paragraph 1 of this section, except that a distributor who neither

- (1) sells any part of the milk produced by him to other distributors (other than

those who operate only stores or similar establishments) or to manufacturing plants, nor

- (2) purchases milk from other producers or distributors for distribution as whole milk or cream,

shall as to each delivery period receive an exemption for that daily average volume of his sales and uses up to and including pounds of milk (such amount to be adjusted from time to time by the Market Administrator so as to approximate the average amount of Class I and Class II milk handled per retail route by all distributors), which exemption shall be ratably deducted from such distributors' Class I, Class II, and Class III sales or uses in proportion to the respective total amounts of such sales or uses in such classes. No exemption made pursuant to this subdivision shall be included by the Market Administrator in his computations made pursuant to paragraph 5 hereof.

Nothing contained in this subdivision shall be construed to mean that the aforesaid exemption shall apply to any distributor other than an individual who produces milk distributed by himself as whole milk or cream.

All information furnished the Market Administrator pursuant to this paragraph 4 shall remain confidential in accordance with the provisions of the applicable General Regulations Agricultural Adjustment Administration, but any such information shall be submitted by the Market Administrator to the Secretary at any time upon the request of the Secretary.

5. With respect to each delivery period, the Market Administrator shall:

- (a) Compute the total value, in each class, of all milk as reported by each and all distributors pursuant to paragraph 4, on the basis of the prices set forth in paragraph 1, making the appropriate adjustments as provided in section B, which computation shall not include milk purchased by distributors from other distributors.
- (b) Compute the total quantity of milk by hundredweight represented by the delivered bases of all producers as reported pursuant to paragraph 4.
- (c) Compute the value of the milk purchased, sold or used by all distributors in excess of the total delivered bases as reported pursuant to paragraph 4, of all producers excluding new producers by multiplying such excess quantity of milk by the price provided for in paragraph 1 for Class III milk.

- (d) Compute the total amount to be paid to new producers by all distributors as reported pursuant to paragraph 4 on the basis of the prices set forth in section G of this exhibit.
- (e) Compute the total value of the quantity of milk represented by the total delivered bases of all producers by subtracting from the amount obtained in subdivision (a) the amounts obtained in subdivisions (c) and (d).
- (f) Compute the total adjusted value of the quantity of milk represented by the total delivered bases of all producers as reported by distributors, pursuant to paragraph 4, by adding to the total value of such milk, as computed in subdivision (e), the adjustments provided for in section C (1).
- (g) Compute the blended price for the quantity of milk represented by the total delivered bases of all producers by dividing the amount obtained in subdivision (f) by the quantity of milk represented by the total delivered bases of all producers as determined in subdivision (b).

6. On or before the 10th day of each delivery period the Market Administrator shall notify all distributors who have reported pursuant to paragraph 4, of the blended price as determined above and of the Class III price as provided for in paragraph 1 above.

Each such distributor shall pay to producers (including new producers) on or before the 15th day of each delivery period for milk delivered by such producers during the preceding delivery period subject to adjustments and deductions which are to be made pursuant to sections C and D of this exhibit:

- (a) to producers at the blended price for the quantity of milk delivered by each producer represented by such producer's delivered base; and
- (b) to producers at the Class III price for the quantity of milk delivered by such producers in excess of such producers' delivered bases;
- (c) to new producers at the price provided in section G.

Provided that no provision in this Agreement shall be construed as controlling or restricting any producers' cooperative association, a party to this Agreement, with respect to the actual deductions or charges, dividends or premiums to be made by such association from and/or to its members; but no such deductions or charges may be made by any such producers' cooperative association

from any of its members, to meet a current operating loss incurred by such producers' cooperative association in its processing or distribution operations unless (a) expressly and specifically authorized by any such member to make such deduction or charge for such purpose, and (b) the producers' cooperative association notifies the Market Administration of the same.

7. The Market Administrator shall maintain for each distributor an adjustment account:

- (a) which shall be debited for the total value of the quantity of milk reported as received, sold, distributed or used by such distributor during the preceding delivery period computed pursuant to subdivision (a) of paragraph 5; and
- (b) which shall be credited for the total value of the quantity of milk reported by such distributor pursuant to paragraph 4 (excluding milk delivered by other distributors) on the basis of the prices to be paid to producers (and new producers) pursuant to paragraph 6. Such credit shall be made after giving effect to the adjustments to be made pursuant to paragraph 1 of section C, and before giving effect to the adjustments and deductions provided for in sections C (2) and D of this exhibit.

Balances due to the Market Administrator on adjustment accounts with respect to milk purchased during any delivery period shall be paid to the Market Administrator on or before the 15th day of the following delivery period. Any funds so paid to the Market Administrator shall, as soon as reasonably possible, be paid out by him pro rata among distributors in proportion to the amount of adjustments to which but only to the extent to which they are entitled.

8. Any error in computation of payments or any discrepancies in reports of distributors or in the adjustment accounts shall be adjusted when settlements are made with respect to the following delivery period. Whenever the Market Administrator has a balance on hand in excess of any adjustments to be made to distributors, he may distribute such balance or any part thereof in an equitable manner among producers in the market.

9. The Market Administrator and/or any functioning producers' cooperative, hereinafter called "any Association" ("functioning producers' cooperative" means an association which, in the opinion of the Market Administrator, is furnishing services to its members in keeping with the requirements of the terms of this Agreement) shall at all reasonable times have the right to check sampling, weighing, and butterfat tests made by distributors, for the purpose of determining the accuracy thereof. In the event of a discrepancy between weights and tests

reported by distributors and weights and tests determined by the Market Administrator and/or any Association settlements shall be made by distributors upon the basis of such weights and such butterfat content as the Market Administrator may in each case decide.

SECTION B. Adjustments in Cost of Milk to Distributors.

1. Each distributor shall make the following deductions from the prices to be paid for milk purchased as provided in paragraph 1 of section A:

- (a) with respect to Class I milk, the following standard hauling rates, or actual hauling rates for milk, whichever is the lesser, (subject, however, to the approval of the Market Administrator);
- (b) with respect to Class II milk, one-eighth of hauling rates for milk as computed for Class I milk, (subject to the approval of the Market Administrator).

Standard Hauling Rates

Hatch, New Mexico _____

Las Cruces, New Mexico _____

2. Unless the prior written consent of the Market Administrator is obtained for some other basis of computation the adjustments in the cost of milk to distributors made pursuant to this section, shall be computed on the following basis:

- (a) the milk which was delivered to each distributor at locations in or nearest to the El Paso Sales Area, to the extent necessary to supply each such distributor with the milk sold, distributed or used by him as Class I milk, shall be classified as Class I milk;
- (b) any excess beyond that quantity of milk classified pursuant to subparagraph (a) above, delivered to each distributor at locations in or nearest to the El Paso Sales Area, to the extent necessary to supply each such distributor with the milk sold, distributed or used by him as Class II milk, shall be classified as Class II milk.

SECTION C. Adjustments in Payments to Producers.

1. Each distributor shall make the following deductions

from the payments to be made to producers (excluding new producers) as provided in section A: the amounts specified in section B.

2. Each distributor shall make the following payments in addition to, or make the following deductions from, the prices to be paid to producers (including new producers) pursuant to paragraph 6 of section A:

If any producer has delivered to any distributor, during any delivery period, milk having an average butterfat content other than three and five-tenths percent (3.5%), such distributor shall pay to each such producer four (4) cents per hundred (100) pounds for each one-tenth of one percent (1/10th of 1%) of average butterfat content above, or shall be entitled to deduct four (4) cents per hundred (100) pounds for each one-tenth of one percent (1/10th of 1%) of average butterfat content below three and five-tenths percent (3.5%).

3. Any distributor may, with the prior approval of the Market Administrator, make payments to producers in addition to the prices provided for in paragraph 6 of section A, provided that such additional payments are made to all the producers supplying such distributor with milk of similar quality and grade. No distributor may accept services from or render services to a producer or an association of producers from whom he is purchasing milk without making a reasonable payment or charge, as the case may be, for such services.

SECTION D. Deductions from Payments to Producers.

1. Each distributor shall deduct five (5) cents per hundredweight from the payments to be made by him pursuant to section A in regard to all milk delivered to him by the producers, and pay over such deductions to the Market Administrator simultaneously with making payment to producers for milk purchased.

2. Each distributor, who also produces milk which is sold, used or distributed as either Class I, Class II or Class III milk, shall, on or before the 15th day after the end of each delivery period, pay to the Market Administrator two (2) cents per hundredweight with respect to all the milk produced by such distributor and sold, used or distributed by him as Class I, Class II, or Class III milk during the preceding delivery period.

3. The Market Administrator, in his discretion, may at any time waive the payment of the foregoing deductions, or any part thereof, (in which event the distributors shall not make the deductions to such extent from their payments to producers), for any delivery period: Provided, however, That

any such waiver shall be equal among all producers (a) with respect to the amounts to be retained by the Market Administrator to meet his cost of operation, and (b) with respect to the amounts to be used by the Market Administrator for securing benefits to producers.

4. The Market Administrator shall maintain separate accounts for the payments made to him pursuant to paragraphs 1 and 2, depending upon the use of such monies as hereinafter provided. The Market Administrator shall apportion such monies in the following manner:

- (a) two (2) cents per hundredweight from the payments made pursuant to paragraph 1, and the payments made pursuant to paragraph 2 shall be retained by the Market Administrator to meet his cost of operation: Provided, however, That any such funds which may remain over from such payments in excess of the cost of operation of the Market Administrator for any particular delivery period, shall be applied by him in meeting his cost of operation for the succeeding delivery period, and to the extent that it may be practical, the Market Administrator shall waive a portion of such payments for the succeeding delivery period as herein in this section provided.
- (b) three (3) cents per hundredweight from the payments made to the Market Administrator pursuant to paragraph 1 with respect to the milk delivered by members of any Association shall be paid over by the Market Administrator to such Association. Such payment shall be made for the purpose of securing to producers who are members of any Association, benefits such as market information, supervision of weights and tests, guarantee against failure of distributors to make payment for milk purchased and other similar benefits. The Market Administrator shall pay over such funds to any Association upon the consent of such Association: (a) to keep its books and records in a manner satisfactory to the Market Administrator; (b) to permit the Market Administrator to examine its books and records, and furnish the Market Administrator such verified reports or such other information as the Market Administrator may, from time to time request; and (c) to disburse such funds in the manner provided above.
- (c) three (3) cents per hundredweight from the payments made to the Market Administrator pursuant to paragraph 1 with respect to the milk delivered by producers not members of any Association, shall be retained by the Market Administrator and expended by him for the purpose of securing for such non-member producers, market information, supervision

of weights and tests, guarantee against failure of distributors to make payment for milk purchased and other similar benefits: Provided, however, That the Market Administrator may, in his discretion, employ the facilities and services of any agent or agents, and pay over such funds in such amount as he may determine to such agent or agents for the purpose of securing to such nonmembers the aforementioned benefits, if such benefits to nonmembers may be more efficiently and economically secured thereby. The Market Administrator shall pay over such funds to such agent or agents, if he determines to do so, only upon the consent of such agent or agents (a) to keep its or their books and records in a manner satisfactory to the Market Administrator; (b) to permit the Market Administrator to examine its or their books and records, and to furnish the Market Administrator such verified reports or other information as the Market Administrator may from time to time request; and (c) to disburse such funds in the manner above provided;

- (d) Whenever the Market Administrator has a balance on hand in either of the accounts provided for in subdivisions (a) and (c) of this paragraph, he may distribute such balance, or any part thereof, in an equitable manner, among the producers, (including new producers): Provided, however, That any such distribution of the balance in the account provided for in subdivision (a) shall be made to all producers, (including new producers), and any such distribution of the balance provided for in subdivision (c) shall be made only to all producers (including new producers) not members of any Association.

SECTION E. The Market Administrator - His Designation, Duties and Compensation.

The Secretary shall designate the Market Administrator who shall perform such duties as may be provided for him pursuant to the Agreement. The Market Administrator so designated shall be subject to removal, at any time, by the Secretary. Within forty-five (45) days following the date upon which he enters upon his duties, the Market Administrator shall execute and deliver to the Secretary a bond in such amount as the Secretary may determine, with surety thereon satisfactory to the Secretary, conditioned upon the faithful performance of his duties as such Market Administrator. The Market Administrator shall be entitled:

- (a) to reasonable compensation, which shall be determined by the Secretary;

- (b) to borrow money to meet his cost of operation until such time as the first payments are made to him pursuant to section B of this exhibit, which monies shall be repaid out of the payments retained by the Market Administrator pursuant to paragraph 4, subdivision (a), of said section D; and
- (c) to incur such other expenses, including compensation for persons employed by the Market Administrator as the Market Administrator may deem necessary for the proper conduct of his duties, and the cost of procuring and continuing his bond, which total expense shall be deemed to be the cost of operation of the Market Administrator. The Market Administrator shall not be held personally responsible in any way whatsoever to any party to this Agreement or to any other person for errors in judgment, mistakes of fact or other acts, either of commission or omission, except for acts of dishonesty, fraud, or malfeasance in office.

The Market Administrator shall keep such books and records as will clearly reflect the financial transactions provided for in this Agreement. The Market Administrator shall permit the Secretary to examine his books and records at all times, and furnish the Secretary such verified reports or other information as the Secretary may, from time to time, request of him.

The Market Administrator shall have the right to examine the books and records of the distributors and the books and records of the affiliates and subsidiaries of each distributor for the purpose of (1) verifying the reports and information furnished to the Market Administrator by each distributor pursuant to this Agreement and/or (2) in the event of the failure of any distributor to furnish reports or information as required by this Agreement, obtaining the information so required.

SECTION F. Establishment of Milk Industry Board.

The Secretary may, in his discretion, at any time, establish a Milk Industry Board, which shall have representation of producers, distributors, and the public. In establishing the Milk Industry Board, the Secretary will give due consideration to the recommendations and nominations by various groups of producers, distributors and the public. The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it in order to effectuate the provisions and purposes of this Agreement. The Secretary may further, in his discretion, authorize and direct the Market Administrator to pay over to the Milk Industry Board for the purpose of meeting its general expenses, a portion of the monies paid to the Market Administrator for his cost of operation, pursuant to section D of this exhibit, providing that such portion shall in no event exceed one-fourth ($\frac{1}{4}$) cent per hundred pounds of milk for which such payment is made.

SECTION G. New Producers.

1. New producers shall be those producers whose milk was neither being purchased by distributors nor being distributed in the El Paso Sales Area within ninety (90) days prior to the effective date of this Agreement.

2. Each distributor upon first receiving milk from any producer shall immediately report to the Market Administrator (1) the name of such producer, (2) the date on which such producer's milk was first received, and (3) whether or not such producer is a new producer.

3. Each distributor shall pay to each new producer for all milk delivered by or handled for such new producer from the date when milk is first received to the end of the sixth full delivery period after such date (excluding any emergency period during which such producer receives payment pursuant to paragraph 4 hereof), the Class III price set forth in paragraph 1 of section A:

The Market Administrator shall allot a base to each new producer prior to the expiration of the sixth delivery period during which his milk is being sold in the El Paso Sales Area, which base shall be allotted in accordance with the provisions of exhibit B hereof.

Provided, however, That such base shall not be effective for the purposes of exhibit A until the expiration of said 90-day period.

4. During the emergency period when the normal supply of milk from producers who have established bases is not sufficient to meet the Class I requirements of any distributor, such distributor may, with the prior approval of the Market Administrator, purchase milk of any producer who has no base; Provided, however, That in any such event, the producer selling such milk shall be paid for the same depending upon the ultimate use of such milk and at the prices as provided for in paragraph 1, section A, and such payment shall not be included in the computation as provided in paragraph 5, section A, but shall be reported separately to the Market Administrator by the distributor who purchased the milk from such producer.

EXHIBIT B

RULES FOR ESTABLISHMENT OF BASES

1. For the purposes of the Agreement, the term "established base" as used in respect to any producer shall mean the average daily production of milk sold or distributed for consumption as whole milk and/or cream in the El Paso Sales Area during the period of 1933 and 1934, or such portion of this period during which the milk of such producer was sold or distributed for consumption as milk and/or cream in the El Paso Sales Area.

2. The Market Administrator may make such revisions in the bases of any and all producers as he may, from time to time, deem necessary or advisable, to the end that such bases may be equitable as among producers and that the total of all established bases may, so far as practical, be equal to the total quantity of milk sold or used by distributors as Class I and Class II milk.

3. Every distributor shall, within ten (10) days of the effective date of this Agreement, submit to the Market Administrator written reports, verified under oath, containing the following information (1) with respect to each producer who has delivered milk to such distributor and (2) for each calendar month during the years of 1933 and 1934 or such portion thereof as the producer may have delivered milk:

- (a) The total pounds of delivered milk.
- (b) The average percentage of butterfat in such delivered milk.
- (c) The total pounds of butterfat in such delivered milk.

Each distributor required to report pursuant to paragraph 4 of section A of exhibit A shall, in addition to the foregoing information include in the report submitted by him a statement containing the following information with respect to each calendar month during the years 1933 and 1934 or such portion thereof as such distributor may have distributed or sold milk produced by himself:

- (a) the total quantity of milk produced by him and sold by him as Class I, Class II, and Class III milk,
- (b) the average percentage of butterfat in such milk, and
- (c) the total number of pounds of butterfat in such milk.

4. When bases are established for producers, as hereinabove provided, the Market Administrator shall notify each distributor of the bases of the producers who are delivering milk to such distributor. (Before the expiration of the first six (6) full delivery periods that the milk of a new producer

is sold to distributors, the Market Administrator shall notify the distributors of the base of such new producer).

5. A producer with a base, whether landlord or tenant, may retain his base when moving his entire herd from one farm to another farm.

6. A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant, if the landlord owns the entire herd. Likewise, the tenant who rents on shares is entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by tenant and landlord, the base shall be divided between the joint owners according to the ownership of the cattle if and when such joint owners terminate the tenant-landlord relationship.

7. Any producer who voluntarily ceases to market milk pursuant to the terms and provisions of this Agreement for a period of more than forty-five (45) consecutive days shall forfeit his base. In the event that he thereafter commences to market milk pursuant to the terms and provisions of this Agreement, he shall be treated for the purposes of these rules as if he were a new producer.

8. Any producer may relinquish his base at any time. In the event, thereafter, such producer requests the Market Administrator to allot him a base, he shall be treated for the purpose of these rules as if he were a new producer,

9. A base may be transferred by the Market Administrator from a producer to a person who has no base, upon the transfer of the producer's entire herd to such person.

10. Any producer whose average monthly delivery of milk for any three (3) consecutive months is less than seventy-five (75) per cent of his base will thereby establish a new base equal to such average monthly delivery.